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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11  
12 PACIFIC BELL TELEPHONE COMPANY ) Case No. CV 11-0970 CRB  
13 d/b/a AT&T CALIFORNIA, )  
14 Plaintiff, ) **STIPULATION AND [PROPOSED]**  
15 v. ) **ORDER TO HOLD CASE IN ABEYANCE**  
16 MICHAEL R. PEEVEY, TIMOTHY ALAN ) **AND CONTINUE ALL PENDING**  
17 SIMON, MIKE FLORIO, and CATHERINE, ) **DEADLINES AND INITIAL CASE**  
17 J.K. SANDOVAL, IN THEIR OFFICIAL ) **MANAGEMENT CONFERENCE**  
18 CAPACITIES AS COMMISSIONERS OF THE ) **PENDING FURTHER ACTION FROM**  
18 CALIFORNIA PUBLIC UTILITIES ) **THE CALIFORNIA PUBLIC UTILITIES**  
19 COMMISSION, AND NOT AS ) **COMMISSION**  
19 INDIVIDUALS, and XO COMMUNICATIONS ) **[Civil L.R. 6-1(b) and 6-2]**  
20 SERVICES, INC., ) **Trial Date: None**  
20 Defendant. )  
21

21 Pursuant to Civil Local Rules 6-1(b) and 6-2 of the United States District Court for the  
22 Northern District of California and Standing Order 4 of the Honorable Charles R. Breyer, it is  
23 hereby stipulated by and among Plaintiff Pacific Bell Company d/b/a AT&T California (“AT&T”)  
24 and Defendants, Michael R. Peevey, Timothy Alan Simon, Mike Florio, Catherine J.K. Sandoval,  
25 in their official capacities as Commissioners of the California Public Utilities Commission  
26 (“CPUC”), and XO Communications Services, Inc. (“XO”) (collectively the “Parties”), by and  
27 through their respective counsel or record, as follows:

28 1. This case shall be held in abeyance for a period of 120 days from May 6, 2011 in

1 order to give the CPUC an opportunity to rule on AT&T's Application For Rehearing pending in  
 2 the underlying CPUC docket, as described *infra*.

3       2. The Parties have reason to believe that the CPUC likely will act upon AT&T's  
 4 pending request for rehearing of CPUC Decision (D.)10-07-005 within the next ninety (90) days,  
 5 possibly as soon as June 23, 2011. Resolution of that rehearing request could alter the posture of  
 6 the Parties in this proceeding and benefit the Court and parties in their analysis of the issues in  
 7 dispute.

8       3. In consideration of these developments, the Parties agree that holding this action in  
 9 abeyance for a limited period of time is prudent.

10     4. Pursuant to this stipulated period of abeyance, all of the Parties' respective rights  
 11 shall be preserved for the 120 day abeyance period, including but not limited to the right of  
 12 defendants CPUC and XO to answer or otherwise respond to AT&T's Complaint.

13     5. This Stipulation would alter certain preliminary deadlines established by this Court,  
 14 including the obligation to meet and confer to discuss preliminary case management and  
 15 scheduling issues, as well as the obligation to file a Joint Case Management Statement in advance  
 16 of the Case Management Conference currently scheduled for June 24, 2011. For this reason, the  
 17 Parties stipulate and request of this Court that all of the following dates and deadlines be extended  
 18 as follows:

19       a. The May 6, 2011 deadline for Defendants CPUC and XO to answer or  
 20 otherwise respond to AT&T's Complaint shall be extended to September 6, 2011.

21       b. The Initial Case Management Conference scheduled for Friday, June 24,  
 22 2011 shall be continued to Friday, October 21, 2011 at 8:30 a.m. in Courtroom 8, 19<sup>th</sup> Floor, 450  
 23 Golden Gate Avenue, San Francisco, California, or as soon thereafter as is convenient for the  
 24 Court.

25       c. The May 25, 2011 deadline for lead trial counsel to meet and confer in  
 26 advance of the Initial Case Management Conference, as required by this Court's March 17, 2011  
 27 Order Setting Case Management Conference, shall be continued to September 21, 2011.

28       d. The June 17 deadline for the Parties to file a Joint Case Management

1 Statement shall be continued to October 14, 2011.

2 e. The June 2, 2011 deadline for the Parties to do the following shall be  
3 continued to September 30, 2011:

4 i. meet and confer re: early settlement, ADR process selection, and  
5 discovery plan;  
6 ii. file ADR Certification signed by Parties and Counsel;  
7 iii. file either Stipulation to ADR Process or Notices of Need for ADR  
8 Phone Conference.

9 This is the first stipulated time modification in this case, as set forth *supra*. No trial date  
10 has been set, so this extension will not require that a trial date be rescheduled, but it will require  
11 that the Initial Case Management Conference and related deadlines be rescheduled, as set forth  
12 *supra*.

13 Pursuant to Section X of Northern District of California General Order 45, counsel for  
14 Defendant XO attests that it has obtained concurrence in the filing of this document from Mr.  
15 David Discher, counsel for Plaintiff AT&T, and Ms. Laura Gasser, counsel for CPUC, on April  
16 27, 2011.

17 IT IS SO STIPULATED.

18 DATED this 27<sup>th</sup> day of April 2011. DAVIS WRIGHT TREMAINE LLP

19 By: \_\_\_\_\_ /s/  
20 Joseph E. Addiego III  
21 Attorneys for Defendant XO Communications  
22 Services, Inc.  
23 CALIFORNIA PUBLIC UTILITIES COMMISSION

24 By: \_\_\_\_\_ /s/  
25 Laura Gasser  
26 Attorneys for Defendant California Public Utilities  
27 Commissioners Peevey, Simon, Florio, and Sandoval

28 PACIFIC BELL TELEPHONE COMPANY, d/b/a  
AT&T CALIFORNIA

By: \_\_\_\_\_ /s/  
David Discher  
Attorneys for Plaintiff Pacific Bell Telephone  
Company, d/b/a AT&T California

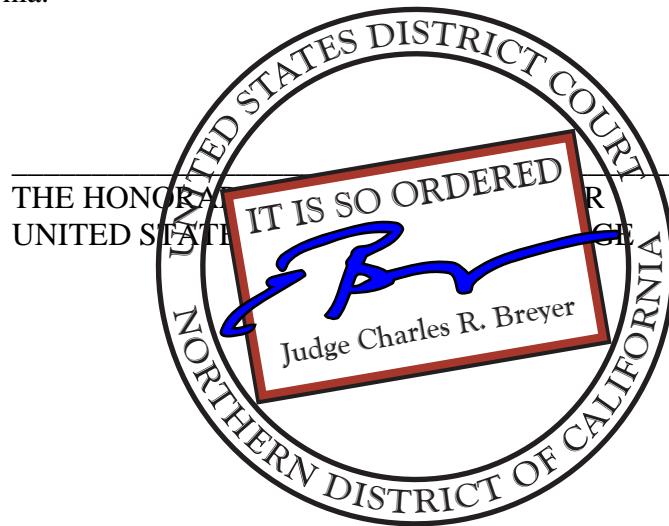
1 **ORDER**

2 Pursuant to stipulation, the foregoing is approved and IT IS SO ORDERED.

3 IT IS FURTHER ORDERED that the June 24, 2011, Initial Case Management Conference  
4 shall be rescheduled to October 21, 2011, at 8:30 a.m. in Courtroom 8, 19<sup>th</sup> Floor, 450 Golden  
5 Gate Avenue, San Francisco, California.

6 IT IS SO ORDERED.

7 DATED: April 26, 2011.



DAVIS WRIGHT TREMAINE LLP